

STATE OF INDIANA) IN THE MARION CIRCUIT/SUPERIOR COURT
) SS: **49D050503 PL 008719**
COUNTY OF MARION) CAUSE NO. _____

STATE OF INDIANA,)
)
 Plaintiff,)
)
 v.)
)
MATTHEW CONNER,)
)
 Defendant.)

FILED
(46) MAR 07 2005
Diana Lynn Schaller
CLERK OF THE
MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, civil penalties, costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).
2. At all times relevant to this Complaint, the Defendant, Matthew Conner, was an individual engaged in the sale of items via the Internet, with a principal place of business in Marion County, located at 1937 Adina Boulevard, Indianapolis, Indiana, 46203.

FACTS

3. At least since February 29, 2004, the Defendant has offered items for sale via the Internet.

A. Allegations regarding Samuella Jean.

4. On or about February 29, 2004, the Defendant entered into a contract via the Internet with Samuella Jean ("Jean") of Palm Beach Gardens, Florida, wherein the Defendant represented he would sell an Outkast Music CD to Jean for Twelve Dollars and Ninety-Nine Cents (\$12.99), which Jean paid.

5. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the Outkast Music CD to Jean within a reasonable period of time.

6. The Defendant has yet to either provide a refund, or to ship the Outkast Music CD to Jean.

B. Allegations regarding Kathryn Canino.

7. On or about July 26, 2004, the Defendant entered into a contract via the Internet with Kathryn Canino ("Canino") of Charleston, South Carolina, wherein the Defendant represented he would sell a Razor Electric Scooter to Canino for One Hundred Eighty Dollars and Fifty Cents (\$180.50), which Canino paid.

8. On August 18, 2004, the Defendant E-mailed Canino and stated he would provide a full refund within four (4) to seven (7) days.

9. On August 25, 2004, the Defendant E-mailed Canino and stated, "your refund will be sent out within the next few days."

10. On September 2, 2004, the Defendant E-mailed Canino and stated a "refund was purchased tonight and will be in tomorrow's mail."

11. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the Electric Scooter to Canino, or issue a refund within a reasonable period of time.

12. The Defendant has yet to either provide a refund, or to ship the Electric Scooter to Canino.

C. Allegations regarding Lynette Mincks.

13. On or about July 20, 2004, the Defendant entered into a contract via the Internet with Lynette Mincks ("Mincks") of Midland, South Dakota, wherein the Defendant represented he would sell an 18' x 42' above-ground swimming pool to Jean for Two Hundred and Twenty Dollars (\$220.00), which Mincks paid.

14. On August 11, 2004, the Defendant E-mailed Mincks and stated, "I will get your refund out within 10 days."

15. On September 7, 2004, the Defendant E-mailed Mincks requesting she "just bare with us a little longer and we will get the refunds out."

16. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the pool, or otherwise issue a refund to Mincks, within a reasonable period of time.

17. The Defendant has yet to either provide a refund, or to ship the pool to Mincks.

D. Allegations regarding Karen Vandevander.

18. On or about July 24, 2004, the Defendant entered into a contract via the Internet with Karen Vandevander ("Vandevander") of Manassas, Virginia, wherein the Defendant represented he would sell an 18' x 42' above-ground swimming pool to Vandevander for One Hundred and Ninety Dollars (\$190.00), which Vandevander paid.

19. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the pool to Vandevander, within a reasonable period of time.

20. The Defendant has yet to either provide a refund, or to ship the pool to Vandevander.

E. Allegations regarding Tyshon Daniel.

21. On or about August 9, 2004, the Defendant entered into a contract via the Internet with Tyshon Daniel ("Daniel") of Asbury Park, New Jersey, wherein the Defendant represented he would sell a Madden NFL 2005 Collector's Edition Playstation 2 game to Daniel for Sixty-Four Dollars and Fifty Cents (\$64.50), which Daniel paid.

22. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the game to Daniel within a reasonable period of time.

23. The Defendant has yet to either provide a refund, or to ship the game to Daniel.

F. Allegations regarding Kenny Khuu.

24. On or about August 15, 2004, the Defendant entered into a contract via the Internet with Kenny Khuu ("Khuu") of Garden Grove, California, wherein the Defendant represented he would sell a Madden NFL 2005 Collectors Edition Playstation 2 game to Khuu for Fifty-Three Dollars and Fifty-Three Cents (\$53.53), which Khuu paid.

25. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the game to Khuu within a reasonable period of time.

26. The Defendant has yet to either provide a refund, or to ship the game to Khuu.

G. Allegations regarding Kent Liebermann.

27. On or about August 18, 2004, the Defendant entered into a contract via the Internet with Kent Liebermann ("Liebermann") of Joliet, Illinois, wherein the Defendant represented he would sell a Super Road Rat go-cart to Liebermann for Three Hundred Thirty Dollars (\$330.00), which Liebermann paid.

28. On September 26, 2004, the Defendant E-mailed Liebermann and stated a refund would be sent to Liebermann on October 9, 2004.

29. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the go-cart, or otherwise issue the refund to Liebermann within a reasonable period of time.

30. The Defendant has yet to either provide a refund, or to ship the go-cart to Liebermann.

H. Allegations regarding Lori Stackhouse.

31. On or about August 18, 2004, the Defendant entered into a contract via the Internet with Lori Stackhouse ("Stackhouse") of Gibsonia, Pennsylvania, wherein the Defendant represented he would sell a Madden NFL 2005 Collectors Edition Playstation 2 game to Stackhouse for Forty-Five Dollars and Four Cents (\$45.04), which Stackhouse paid.

32. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the game to Stackhouse within a reasonable period of time.

33. The Defendant has yet to either provide a refund, or to ship the game to Stackhouse.

I. Allegations regarding Robert Alex Jackson.

34. On or about August 22, 2004, the Defendant entered into a contract via the Internet with Robert Alex Jackson ("Jackson") of Saint Pauls, North Carolina, wherein the Defendant represented he would sell a Super Road Rat go-cart to Jackson for Three Hundred Forty Dollars (\$340.00), which Jackson paid.

35. On October 9, 2004, the Defendant E-mailed Jackson and stated, "you have my word that your refund will be in the mail with a tracking number on Monday [October 11, 2004]."

36. On October 18, 2004, the Defendant E-mailed Jackson and stated he would issue a refund to Jackson on October 22, 2004.

37. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the go-cart to Jackson within a reasonable period of time.

38. The Defendant has yet to either provide a refund, or to ship the go-cart to Jackson.

J. Allegations regarding Rene Castro-Leon.

39. On or about August 25, 2004, the Defendant entered into a contract via the Internet with Rene Castro-Leon ("Castro-Leon") of San Bruno, California, wherein the Defendant represented he would sell a Madden NFL 2005 Collectors Edition Playstation 2 game to Castro-Leon for Forty-Four Dollars and Fifty Cents (\$44.50), which Castro-Leon paid.

40. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the game to Castro-Leon within a reasonable period of time.

41. The Defendant has yet to either provide a refund, or to ship the game to Castro-Leon.

K. Allegations regarding Ronald Heller.

42. On or about August 27, 2004, the Defendant entered into a contract via the Internet with Ronald Heller ("Heller") of Southfield, Michigan, wherein the Defendant represented he would sell a Madden NFL 2005 Collectors Edition Playstation 2 game to Heller for Forty-Eight Dollars and Forty-Five Cents (\$48.45), which Heller paid.

43. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the game to Heller within a reasonable period of time.

44. The Defendant has yet to either provide a refund, or to ship the game to Heller.

L. Allegations regarding Shawn Overton.

45. On or about August 27, 2004, the Defendant entered into a contract via the Internet with Shawn Overton ("Overton") of Shawnee, Kansas, wherein the Defendant represented he would sell a 2005 EA Sports NBA Live X-Box game to Overton for Thirty-Four Dollars and Fifty Cents (\$34.50), which Overton paid.

46. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the game to Overton within a reasonable period of time.

47. The Defendant has yet to either provide a refund, or to ship the game to Overton.

M. Allegations regarding Curtis Sloan.

48. On or about August 27, 2004, the Defendant entered into a contract via the Internet with Curtis Sloan ("Sloan") of Center Point, Iowa, wherein the Defendant represented he would sell three (3) Super Road Rat go-carts to Overton for a total price of Eight Hundred and Fifty-Five Dollars and Sixty-Eight Cents (\$855.68), which Sloan paid.

49. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the game to Sloan within a reasonable period of time.

50. The Defendant has yet to either provide a refund, or to ship the go-carts to Sloan.

N. Allegations regarding Sherry Thrash.

51. On or about August 28, 2004, the Defendant entered into a contract via the Internet with Sherry Thrash (“Thrash”) of Westminster, Colorado, wherein the Defendant represented he would sell a Super Road Rat go-cart to Thrash for Three Hundred Thirty-Eight Dollars and Sixty-Eight Cents (\$338.68), which Thrash paid.

52. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the go-cart to Thrash within a reasonable period of time.

53. The Defendant has yet to either provide a refund, or to ship the go-cart to Thrash.

O. Allegations regarding Randall Traylor.

54. On or about August 28, 2004, the Defendant entered into a contract via the Internet with Randall Traylor (“Traylor”) of Salem, Virginia, wherein the Defendant represented he would sell a Madden NFL 2005 Collectors Edition Playstation 2 game to Traylor for Forty-Seven Dollars and Forty-Five Cents (\$47.45), which Traylor paid.

55. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the game to Traylor within a reasonable period of time.

56. The Defendant has yet to either provide a refund, or to ship the game to Traylor.

P. Allegations regarding Chad Fisher.

57. On or about August 29, 2004, the Defendant entered into a contract via the Internet with Chad Fisher ("Fisher") of Huntington, West Virginia, wherein the Defendant represented he would sell a Hot Shots Golf Playstation 2 game to Fisher for Thirty Dollars and Seventy Cents (\$30.70), which Fisher paid.

58. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the game to Fisher within a reasonable period of time.

59. The Defendant has yet to either provide a refund, or to ship the game to Fisher.

Q. Allegations regarding Michael Ortega.

60. On or about August 29, 2004, the Defendant entered into a contract via the Internet with Michael Ortega ("Ortega") of Kingsville, Texas, wherein the Defendant represented he would sell a Hot Shots Golf Playstation 2 game to Ortega for Twenty-Nine Dollars and Seventy-Five Cents (\$29.75), which Ortega paid.

61. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the game to Ortega within a reasonable period of time.

62. The Defendant has yet to either provide a refund, or to ship the game to Ortega.

R. Allegations regarding Douglas Harper.

63. On or about August 31, 2004, the Defendant entered into a contract via the Internet with Douglas Harper ("Harper") of Indianapolis, Indiana, wherein the Defendant represented he would sell a Madden NFL 2005 Collectors Edition Playstation 2 game to Harper for Fifty Dollars and Forty-Nine Cents (\$50.49), which Harper paid.

64. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the game to Harper within a reasonable period of time.

65. The Defendant has yet to either provide a refund, or to ship the game to Harper.

S. Allegations regarding William Tuell.

66. On or about August 31, 2004, the Defendant entered into a contract via the Internet with William Tuell ("Tuell") of Mauckport, Indiana, wherein the Defendant represented he would sell two (2) Super Road Rat go-carts to Tuell for a total price of Five Hundred Dollars (\$500.00), which Tuell paid.

67. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale he would ship the go-carts to Tuell within a reasonable period of time.

68. The Defendant has yet to either provide a refund, or to ship the go-carts to Tuell.

COUNT I-VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

69. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 68 above.

70. The transactions referred to in paragraphs 4, 7, 13, 18, 21, 24, 27, 31, 34, 39, 42, 45, 48, 51, 54, 57, 60, 63, and 66 are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(a)(1).

71. The Defendant is a “supplier” as defined by Ind. Code § 24-5-0.5-2(a)(3).

72. The Defendant’s representations to consumers that he would sell the items, or that the consumer transaction had other benefits or characteristics, when the Defendant knew or reasonably should have known the consumers would not receive such, as referenced in paragraphs 4, 7, 13, 18, 21, 24, 27, 31, 34, 39, 42, 45, 48, 51, 54, 57, 60, 63, and 66, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

73. The Defendants’ representations to consumers that the consumers would be able to receive a refund, or that the consumer transactions had other warranties, rights, or remedies, when the Defendants knew or reasonably should have known no such refunds, warranties, rights, or remedies would be provided, as referenced in paragraphs 8, 9, 10, 11, 14, 15, 28, 35, and 36, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(8).

74. The Defendant’s representations to consumers that the Defendant would deliver the items, or otherwise complete the subject matter of the consumer transaction within a reasonable period of time, when the Defendant knew or reasonably should have known that he would not, as referenced in paragraphs 8, 9, 10, 11, 14, 15, 16, 19, 22, 25, 28, 29, 32, 35, 36, 37, 40, 43, 46, 49, 52, 55, 58, 61, 64, and 67 are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

75. The Defendant's representations to the consumers that they would be able to purchase the items advertised by the Defendant, when the Defendant did not intend to sell them, as referenced in paragraphs 4, 7, 13, 18, 21, 24, 27, 31, 34, 39, 42, 45, 48, 51, 54, 57, 60, 63, and 66, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

**COUNT II- KNOWING AND INTENTIONAL VIOLATIONS OF
THE DECEPTIVE CONSUMER SALES ACT**

76. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 75 above.

77. The misrepresentations and deceptive acts set forth in paragraphs 4, 7, 8, 9, 10, 11, 13, 14, 15, 16, 18, 19, 21, 22, 24, 25, 27, 28, 29, 31, 32, 34, 35, 36, 37, 39, 40, 42, 43, 45, 46, 48, 49, 51, 52, 54, 55, 57, 58, 60, 61, 63, 64, 66, and 67 were committed by the Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Matthew Conner, for a permanent injunction pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendant from the following:

- a. representing expressly or by implication the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should know it does not have;
- b. representing expressly or by implication the subject of a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the Defendant knows or reasonably should know the representation is false;

c. representing expressly or by implication the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know he can not;

d. representing expressly or by implication that a consumer will be able to purchase the subject of a consumer transaction as advertised by the Defendant, when the Defendant does not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant, Matthew Conner, for the following relief:

a. cancellation of the Defendant's unlawful contracts with consumers, including but not limited to the persons identified in 4, 7, 13, 18, 21, 24, 27, 31, 34, 39, 42, 45, 48, 51, 54, 57, 60, 63, and 66, pursuant to Ind. Code § 24-5-0.5-4(d);

b. consumer restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers for the purchase of the Defendant's items via the Internet, including but not limited to, the persons identified in 4, 7, 13, 18, 21, 24, 27, 31, 34, 39, 42, 45, 48, 51, 54, 57, 60, 63, and 66, in an, in an amount to be determined at trial;

c. costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

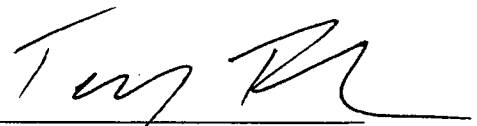
d. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;

- e. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- f. all other just and proper relief.

Respectfully submitted,

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By:


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